

IN THE WATER COURT OF THE STATE OF MONTANA
CLARK FORK DIVISION
KOOTENAI RIVER BASIN (76D)
PRELIMINARY DECREE

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CLAIMANTS: State of Montana Department of Fish, Wildlife
& Parks

CASE 76D-0139-R-2023
76D 30144478

OBJECTORS: State of Montana Department of Fish, Wildlife &
Parks

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claim 76D 30144478 appeared in the Preliminary Decree for the Kootenai River Basin (Basin 76D) issued May 6, 2021. This claim received issue

remarks. Issue remarks result from Department of Natural Resources and Conservation (“DNRC”) claims examination or by Water Court order. This claim also received a self-objection.

The Court consolidated this claim into a Water Court Case on February 9, 2023. The consolidation order set a deadline by which Claimant/Objector was to file information resolving the self-objection.

Claimant/Objector filed resolution information on April 10, 2023.

FINDINGS OF FACT

1. Claim 76D 30144478 appeared with the following issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 76D DECREE ISSUED 03/22/1984.

THIS CLAIM MIGHT BE QUESTIONABLE. THE POND IS FORMED BY A DAM ACROSS THE SOUTH END. THIS MAY NOT BE AN EXEMPT RIGHT.

2. Claimant/Objector objected to all elements of the above-captioned claim.
3. Claimant/Objector requests the following changes to this claim:

AGREEMENTS

Upon claim file review, FWP proposes the following amendments to Claim 76D 30144478:

4. The Source for claim 76D 30144478 shall be amended to “Unnamed Tributary to Derozier Creek” and the “Also known as Woods Ranch Pond” descriptive language shall be removed. As explained in Amy Groen’s Affidavit, attached to this filing, “Dam” shall be removed from diversion means, as at the time water under Claim No. 76D 30144478 was first put to beneficial use for the purpose of stock, Woods Ranch Pond was not in existence and there is currently no dam. Lastly, a 1963 topographic map shows no reservoir on the source.

5. The Point of Diversion for Claim 76D 30144478 shall be amended to W2SWNW of Section 8, T3 7N, R26W consistent with the attached Affidavit of Amy Groen.

6. The Place of Use shall be amended to the W2SWNW of Section 8, T3 7N, R26W consistent with the attached Affidavit of Amy Groen.

4. Claimant's requested changes are supported by the Affidavit of Amy Groen. Ms. Groen is a Water Conservation Specialist for Montana Department of Fish, Wildlife & Parks.

5. Ms. Groen states the following:

2) FWP objected to its own claim to correct errors discovered on claim file review. The source for claim 76D 30144478 should be identified only as "Unnamed Tributary to Derozier Creek" and the "Also known as Woods Ranch Pond" descriptive language should be removed. Additionally, "Dam" should be removed from diversion means; at the time water under Claim No. 76D 30144478 was first put to beneficial use for the purpose of stock, Woods Ranch Pond was not in existence and there is currently no dam. The 1963 topographic map provided shows no reservoir on the source. Exhibit A.

6. Ms. Groen's statements are supported by a review of the referenced 1963 topographic map and the other evidentiary exhibits included with the April 10, 2023 responsive filing.

7. The point of diversion and place of use of Claim 76D 30144478 should be described as W2SWNW of Section 8, T37N, R26W.

8. The remark "ALSO KNOWN AS WOODS RANCH POND" should be removed.

9. The means of diversion should be "Livestock direct from source."

10. The issue remarks should be removed.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Water Court must weigh an issue remark, and the information resulting in that issue remark, against the claimed water right. Section 85-2-247(2), MCA.

3. The Water Court must resolve all issue remarks not resolved through the objection process. Section 85-2-248, MCA. The Court must review information in the claim file or obtained by the Court to determine if there is a sufficient basis to resolve the remarks. 85-2-248(3), MCA.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

CONCLUSIONS OF LAW

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

2. The evidence in the record provides the Court with a sufficient basis to resolve and remove each issue remark from the above-captioned claim.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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Service List Updated: 5/20/2023

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
KOOTENAI RIVER
BASIN 76D**

Water Right Number: 76D 30144478 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: MONTANA, STATE OF DEPT OF FISH WILDLIFE & PARKS
PO BOX 200701
HELENA, MT 59620 0701

Priority Date: APRIL 27, 1918

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: UNNAMED TRIBUTARY OF DEROZIER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		W2SWNW	8	37N	26W	LINCOLN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: LIVESTOCK DIRECT FROM SOURCE

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			W2SWNW	8	37N	26W	LINCOLN

Remarks:

FWP FILED ELECTRONIC CLAIMS. THIS CLAIM REFERENCES MT FWP: WB312. ADDITIIONAL INFORMATION PROVIDED: 1ST USE FROM HOMESTEAD SURVEY.